

BEFORE ADJUDICATING OFFICER, RERA  
BENGALURU, KARNATAKA

Complaint No. CMP/181218/0001776

Presided by Sri K Palakshappa

Adjudicating Officer

Date: 06<sup>th</sup> JUNE 2019

Complainant : Mr. Robin Ghose  
202, Peace Haven Apartments  
Langford Road, Richmond Town  
Bengaluru - 560025  
Represented by Sri H.M.S Advocate.

AND

Opponent : Mantri Manyata Lithos  
Mantri Technology Constellations Pvt.  
Ltd., No. 41, Vittal Mallya Road  
Mantri House, Bengaluru- 560001  
Represented by Sri G.V Chandrashekar,  
Advocate

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**"J U D G E M E N T"**

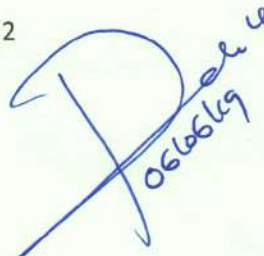
1. Mr. Robin Ghose, Complainant filed complaint bearing complaint no. CMP/181218/0001776 has filed this complaint under Section 31 of RERA Act against the project "Mantri Manyata Lithos" developed by Mantri Technology Constellations Pvt. Ltd., as the complainant is the consumer in the said project. The complaint is as follows:

*"The Complainant entered into an Agreement for Sale of undivided interest dated 19.5.2014 with the Respondent (Developer) and M/s. Manyata*

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Realty (Owner) agreeing to purchase undivided share in the project by name Mantri Manyata Lithos, situated at Rachenahalli, K R Puram Hobli, Bangalore South Taluk, Bangalore. Simultaneously the Complainant also entered into an Agreement of Construction dated 19.5.2014 with the Respondent to get the apartment No. D-901 constructed in the said project. As per clause 6.1 of the Agreement of Construction, the respondent is supposed to construct for the said apartment and handover the possession of the same as per Annexure B1. Till date a sum of Rs. 1,17,89,476/- has been paid to the Respondent. The balance payment has to be made at the time of handing over the possession of the said apartment. 2. Vide email dated 22.06.2017 the Respondent has informed that the timeline for completion and handing over the said Apartment is extended to end of December 2018 as against the earlier committed date of July 2017. Relief Sought from RERA : handing over apartment, interest, penalty"

2. In pursuance of the notice issued by this authority, Shri H.M. Sudheer Advocate filed Vakalath on behalf of the complainant. Anup shah Law firm undertook to file vakalath on behalf of the developer. Later the developer has filed Objection for which the complainant filed their reply.
3. In the month of May 2014, both the parties have entered into Agreement with respondent to flat no. D-901 wherein it was agreed to handover possession on 1<sup>st</sup> July 2017. The complainant had paid Rs. 1,17,89,476/- towards sale consideration against total consideration of Rs. 1,40,64,244/- It is alleged by the complainant that the developer has failed to complete the project/apartment as per the commitment given to the Complainant under the Agreement of Construction. Further the Respondent has unilaterally extended





the time line to hand over the said Apartment to the Complainant from July 2017 to December 2018 which is contrary to RERA Act and Rules. A sum of Rs. 20,000/- separately charged for gas connection which is supposed to be included in the construction cost. In this regard an email dated February 9, 2016 was sent to the Complainant. Respondent issued a letter dated October 22, 2018 informing the Complainant that they will give credit @ 12 % per annum (simple interest) on the advance payment received by them from your in excess of the schedule payment on reducing balance. Surprisingly the Respondent is willing to pay interest only for the excess of scheduled payment and not on the entire payment made by the Complainant. It was also informed that accrued credit shall be credited to Complainant account at the time of final reconciliation during possession. Through several emails the Complainant requested for the break up and reconciled statement from Respondent with regard to 12% credit agreed to be paid by the Respondent. Due to the delay in handing over the possession by the Respondent, the Complainant is continuing to stay in a rented house even as on date and paying a huge rent of Rs. 36,325/- per month.

4. The developer has given some reasons for non completion of the project in stipulated period in

*"it is hereby submitted that the schedule flat could not be delivered on the date as mentioned in the said construction agreement due to various reasons such as*

- a. Firstly, there is no availability of sand due to strike by sand suppliers and lorry drivers;*
- b. Secondly, the Hon'ble High Court of Karnataka had imposed restriction on the working hours of construction by the builders. Subsequently, the pace at which construction work should have proceeded*

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declined further adding to delay in handling over possession of the apartment.

- c. The formulated plan of construction was delayed and also for force and other reasons such as non - availability of raw materials, work force and other Force majeure events which are beyond the control of the respondent. As per the construction agreement, it is specifically mentioned and agreed upon that the date of delivery of possession with regard to apartment is subject to payment of all dues by complainant and issuance of the occupancy certificate.

The completion of project named MANTRI MANYATA LITHOS is burdened due to non payment of installments on time by other purchasers in the project.

I state that, while the construction work was under progress, during November 2016, our country faced demonetization, due to which there was major financial crises. The respondent was also affected financially and faced various issues to continue with the construction work in a smooth manner. As stated supra and coupled with the fact that the respondent's project was a big one, laborers were large in number. Laborers at the construction site were to be paid their daily wages for their work. Since the laborers did not possess bank accounts, the respondent could not deposit/transfer the money to their respective accounts."

5. The developer calls these reasons as Force Majeure. But I am not going to accept these reasons because the developer has collected amount from the complainant from the year 2014. There is a clause in the agreement for delay compensation in case of delay in

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completion of the project. Admittedly the delay has been caused and the developer has not completed the project within the time mentioned in the agreement.

6. When the agreement shows the clause for the payment of delay compensation, the developer has to pay the same. Of course he submits that he is liable to pay compensation only from the month July 2019 but not from the month of July 2017. However the payment of delay compensation from which day has to be ascertained. This point is already made clear and accordingly the developer has to pay the delay compensation from the date mentioned in the agreement.
7. At the time of argument the Learned Counsel for the complainant submits that the developer cannot say that he is ready to pay delay compensation as mentioned in the agreement because he will impose interest @18% to us. Therefore, there should be parity in payment of interest. I find some force because as per Sec. 19(7) the liable to pay interest as prescribed. Therefore, the submission made on behalf of complainant is having force. The developer has no voice against the same.
8. The learned counsel for the complainant has given some decisions given by different authorities including the consumer forum. The main submission made on behalf of the complainant is that the developer who had agreed to deliver the flat in favour of the complainant has failed to comply with the same. According to him Section 18 mandates the developer to give compensation for the delay in completing the project. In support of the same he has relied on some decisions given by this authority itself along with the decisions given by Consumer Redressal forum New Delhi.
9. The advocate for the complainant has given the decision of Haryana RERA authority where it is said that the developer who is

  
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collecting the interest @ 18% for the delayed payment and giving a meagre amount to the Consumer as delay compensation is nothing but an unfair practice.

10. Also referred one more decision given by the Haryana RERA where it is observed that the interest shall be paid from the due date as mentioned in the agreement.
11. I would like to say that there is no quarrel on this point because Section 12, 14, 18 and 19 of RERA act is applicable as per the clauses mentioned in the agreement since it is said that the disputes pending before the consumer forum either before the commencement of the Act or after the commencement of the act may be transferred to the RERA authority for disposal. This principle goes to show that the delay compensation has to be paid only from the date mentioned in the agreement of sale as a due date. When that being the case the argument canvassed on behalf of the developer that the delay compensation has to be paid by the developer only in case he fails to deliver the possession from the date as mentioned in the RERA application falls on the ground. Therefore I say that the argument submitted on behalf of the Complainant is supported with the varieties of decisions and I say that the complainant is entitled for the delay compensation from the due date as mentioned in the agreement of sale which was duly executed between the parties. In addition to it the developer shall not call the complainant to get the sale registered until the developer gets the Occupation Certificate.
12. Before passing the final order I would like to say that as per section 71(2) of RERA the complaint shall be disposed off by the Authority within 60 days from the date of receipt of the complaint. This complaint was filed on 18/12/2018. As per SOP, 60 days shall be computed from the date of appearance of the parties. In this case the parties were present on 11/01/2019. Hence there is a little delay in closing this complaint.

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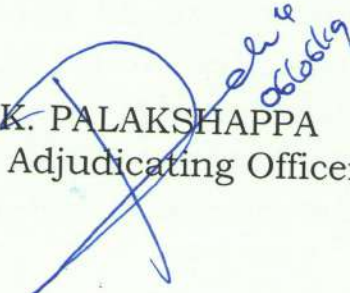
**ORDER**

The Complaint filed by the complainant bearing No. CMP/181218/0001776 is allowed by directing the developer to pay delay compensation @10.75 p.a on the amount received from the complainant for purchase of the flat commencing from August 2017 till the developer executes the Sale deed after obtaining Occupancy Certificate by providing all the amenities.

Further the developer shall also pay Rs. 5000/- as cost of the petition.

Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 06/06/2019).

  
K. PALAKSHAPPA  
Adjudicating Officer